



# Department of the Army Small Business Program



## BUNDLING

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# Agenda

Definitions

The President's (OFPP) Policy

Army Policy

Proposed Changes

What to Do?



# Contract Bundling Definition



FAR 2.101(1) Bundling means -

Consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, into a solicitation for a single contract that is likely to be unsuitable for award a small business concern due to -

- (i) The diversity, size, or specialized nature of the elements of performance specified;
- (ii) The aggregate dollar value of the anticipated award;
- (iii) The geographical dispersion of the contract performance sites; or
- (iv) Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition.



# Contract Bundling Definition



## FAR 2.101

- (2) “Separate smaller contract” means a contract that has been performed by one or more small business concerns.
- (3) “Single contract” includes –
  - (i) Multiple awards of IDIQ contracts under a single solicitation for the same or similar supplies or services to two or more sources; and
  - (ii) An order placed against an IDIQ contract under a – FSS, Task-order or delivery order contract awarded by another agency (for Army, this means non-DOD). This refers to GWAC or multi-agency contracts.
- (4) This definition does not apply to a contract that will be awarded **AND** performed entirely outside the US.



# Contract Bundling Definition



What is “CICA Bundling”?

The reach of the restrictions against total package or bundled procurements in the Competition in Contracting Act of 1984 (CICA) is broader than the reach of restrictions against bundling under the Small Business Act. Phoenix Scientific Corp., B-286817, Feb. 22, 2001, 2001 CPD.

Procurements conducted on a bundled basis can restrict competition and the GAO will sustain a challenge to the use of such an approach where it is not necessary to satisfy the agency’s needs. Better Serv., B-265751.2, Jan. 18 1996, 96-1 CPD.

The determination of a contracting agency’s needs and the best method for accommodating them are matters primarily within the agency’s discretion. Specialty Diving, Inc., B-285939, Oct. 16, 2000, 2000 CPD.



# Contract Bundling Definition



What is "CICA Bundling"?

Where a requirement relates to national defense or human safety, an agency has discretion to define the solicitation requirements to achieve not just reasonable results, but the highest possible reliability and effectiveness. Tucson Mobilephone, Inc. , B-250389, Jan. 29, 1993, 93-1 CPD.

Bottom line definition: How much competition is enough to avoid a GAO determination of bundling (unnecessarily restrictive provisions) under CICA?

Answer: This can only be assessed on a case by case basis as each strategy is developed. Involve your small business specialist in the strategy development early. Allow small businesses and the SBA to assist in the development of the strategy through industry days and workshops.



# Contract Consolidation Definition



207.170 Consolidation of contract requirements.

The use of a solicitation to obtain offers for a single contract or a multiple award contract to satisfy two or more requirements of a department, agency, or activity for supplies or services that previously have been provided to, or performed for, that department, agency, or activity under two or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited.



# Contract Consolidation Definition



Agencies shall not consolidate contract requirements with a total value exceeding \$5,000,000 unless the acquisition strategy includes—

- (1) The results of market research;
- (2) Identification of any alternative contracting approaches that would involve a lesser degree of consolidation; and
- (3) A determination by the senior procurement executive that the consolidation is necessary and justified.



# Contract Consolidation Definition



Market research may indicate that consolidation of contract requirements is necessary and justified if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches. Benefits include costs and, regardless of whether quantifiable in dollar amounts—

- (A) Quality;
- (B) Acquisition cycle;
- (C) Terms and conditions; and
- (D) Any other benefit.



# Contract Consolidation Definition



- Approval authority for all consolidated strategies exceeding \$5,000,000 is the Army Acquisition Executive. The authority can be delegated.
- The D&F must identify alternative Contracting Approaches Involving a Lesser Degree of Consolidation, and Rationale for Rejection.
- Describe the market research performed.
- If the action is also bundled, then the bundling cost benefit analysis can also serve for the consolidation D&F.
- An assertion that Measurably Substantial Benefits (and cost greater than 5%) are expected from consolidation.
- If the action is not bundled then state why the action is not also bundled.

The ACE SADBUI has a good D&F format



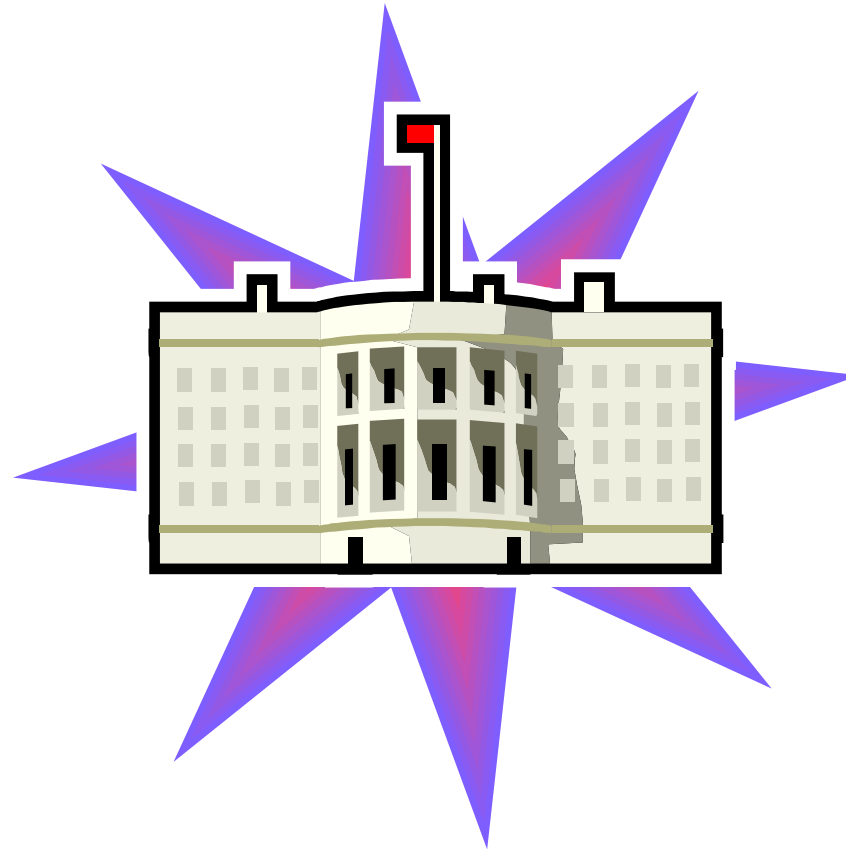
# Contract Consolidation Definition



Savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements unless the total amount of the cost savings is expected to be substantial in relation to the total cost of the procurement.



# The President's (OFPP) Initiative





# The President's Contract Bundling Strategy October 2002



- Ensure accountability of senior agency management for improving opportunities for small businesses.
- Ensure timely and accurate reporting of contract bundling information through The President's Management Council.
- Require contract bundling reviews for task and delivery orders under multiple award contracts.
- Require agency review of proposed acquisitions above thresholds for unnecessary and unjustified contract bundling.
- Require identification of alternative acquisition strategies for proposed bundling and written justifications when non- bundling alternatives are not used.



# The President's Contract Bundling Strategy October 2002 (Continued)



- Strengthen subcontracting plans.
- Facilitate small business teams and joint ventures.
- Identify best practices for maximizing small business opportunities.
- Dedicate agency OSADBUs to the President's Small Business Agenda.



# The President's Contract Bundling Strategy October 2002 (Continued)



- The major change is the emphasis on “unbundling”.
- We are not to merely avoid bundling, but to actively seek small business opportunities as primes.
- Offloading cannot result in a lost small business opportunity.



# Army Policy





# Maximize Small Business Prime Opportunities



FAR 19.202-1

- Divide proposed acquisitions of supplies and services into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement.
- Plan acquisitions such that, if practicable, more than one small business concern may perform the work.
- Ensure that delivery schedules are established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government.



# Maximize Small Business Prime Opportunities



## FAR 7.104

- The planner shall coordinate the acquisition plan or strategy with the small business specialist (SBS) when a strategy contemplates a requirement \$7 million or more.
- The SBS shall notify the agency SADBUI if the strategy involves contract bundling that is unnecessary, unjustified, or not identified as bundled by the agency.
- If the strategy involves substantial bundling, the SBS shall assist in identifying alternative strategies that would reduce or minimize the scope of bundling.



# Contract Bundling

## What are “Substantial Benefits”



- Ten percent of the estimated contract value (including options) if the value is \$75 million or less.
- Five percent of the estimated contract value (including options) or \$7.5 million, whichever is greater, if the value exceeds \$75 million.
- Must use the DOD Benefit Analysis Guidebook



# Contract Bundling

## Current Policy



- **Measurably substantial benefits**
  - cost savings
  - price reduction
  - quality improvements
- **The agency must quantify the identified benefits and explain how their impact would be measurably substantial.**



# Contract Bundling

## Current Policy



- Specify actions designed to maximize small business participation as prime contractors, *including provisions that encourage small business participation*
- Activities shall evaluate small business teams in the same manner as other teams or businesses, with due consideration to the capabilities of all the proposed subcontractors/team members. (13 CFR 644e ©(4))
- Specify actions designed to maximize small business participation as subcontractors (including suppliers) at any tier under the contract or contracts that may be awarded

Use Industry Associations!



# Contract Bundling

## Who can Approve “Bundling”



- Without power of delegation, the Army Acquisition Executive can approve bundled strategies (\$7 million or more) where the expected benefits do not meet the thresholds of this section IF:
  - The bundled strategy is *critical to the agency's mission success*; and
  - The acquisition strategy provides for maximum practicable participation by small business concerns.



# Contract “Unbundling” Summary



Title 13 Chapter I Part 125  
“Government Contracting  
Programs” and the related FAR  
Parts 7, 8, and 19 have been  
changed in order to implement the  
recommendations of the contract  
bundling findings.

**Presidential  
Initiative !**



# Contract Unbundling

## The Changes



- Provide a copy of the proposed acquisition package to the SBA procurement center representative at least 30 days prior to the issuance of the solicitation if—
- The proposed acquisition ~~is~~ <sup>Too Late !!</sup> for supplies or services currently being provided by a small business and the proposed acquisition is of a quantity or estimated dollar value, <sup>( > \$7 Million = Substantial Bundling )</sup> the magnitude of which makes it unlikely that small businesses can compete for the prime contract.



# Contract Unbundling Additional Changes

- The PCR will be required to identify alternate strategies to maximize the participation of small businesses in procurement.
- **Redefines a “single contract”** to include an IDIQ contract awarded to two or more sources under a single solicitation, an order under a FSS, or a task/delivery order awarded by another agency (GWAC).

What if the PCR won't commit?

This is a Big Change



# Senate Proposed Changes





# Contract Consolidation

## S. 137



- No more “bundling” ... it is ALL Consolidation. Close the “loophole”.
- In excess of \$5,000,000,
  - conducts market research
  - identifies any alternative contracting approaches
  - determines that the consolidation is necessary and justified.
- Yep, you’ll have to use the Benefit Analysis Guidebook each time.



# Contract Consolidation

## S. 137



- The contracting officer shall certify that you will subcontract with small businesses as proposed.
- The contracting officer shall insure that subcontracting reports are complete, accurate, and timely.
- The president or chief executive shall certify the accuracy of the subcontracting report ...
- And is guilty of defrauding the Government if he intentionally falsifies data.



# Contract Consolidation

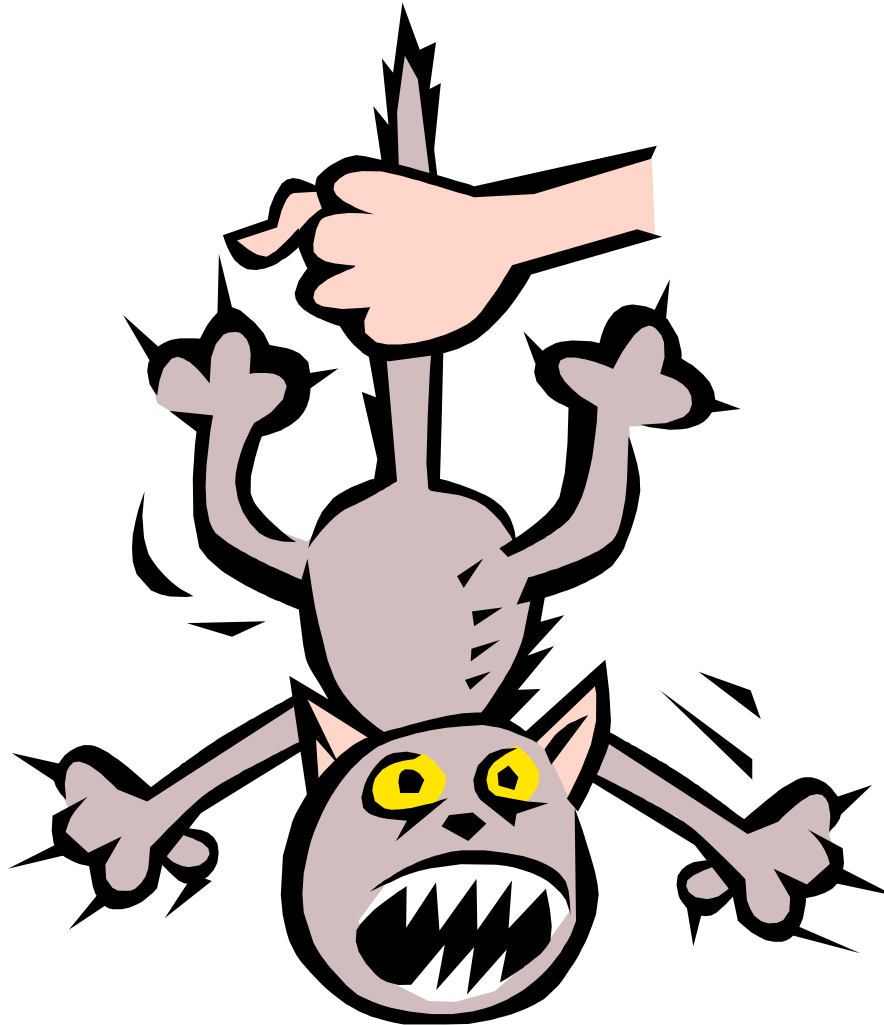
## S. 137



- If a small business falsifies their status, and they are included in the subcontract report, the large business shall match the \$500,000 fine.
- Contracting Officers will be required to maintain a database of contract performance for small businesses to use.
- Contracting Officers can withhold payment from a prime until he receives the completed and accurate subcontract report.



# What to Do?





# Contract Bundling

## Acquisition Leader Considerations



- Think “what is a good business practice”
- If it doesn’t save REAL \$\$ - don’t shoehorn it in – but it must be “critical to agency’s mission success”.
- Write a small business strategy in the Acquisition Strategy.
- Bundled contracts will be tallied and reported to OSD.
- Market Research is NOT simply a “sources sought” synopsis.



# Market Research Lessons Learned



- Shape the acquisition strategy.
- Scrutinize the type and content of the product description or statement of work.
- Carefully consider the NAICS code.
- Develop a small business support strategy.
- Involve the SBA PCR early ... get a commitment on the DD 2579.



\* Good tradeoff decisions are made possible by early user involvement and the information gathered during market research.



# Market Research Lessons Learned



- Ensure performance specifications include a clear understanding of the intended use and operational environment
- Involve industry early to get a realistic assessment of what they can accomplish
- Maximize the use of face-to-face discussions
- Use competition to provide leverage
- State intent to consider and/or assist development of small business teams early



# Market Research Sources



- Procurement Marketing and Access Network (PRO-Net).
- Minority On-Line Information System (MOLIS).
- HUBZone website of the SBA.
- Research and Information Division, Minority Business Development Agency, Department of Commerce.
- Local Chambers of Commerce.
- Procurement Technical Assistance Centers.
- Use local newspapers, including advertisements.
- State and local listings and agencies.
- Defense Contract Management Agency Offices
- Existing company source lists.



Small Business  
is Big Business for  
the Army

Let's Continue the Dialog !